S.B. Civil Second Appeal NO.146/83
Swami Someshwaranand Vs. Rameshwarlal

Date of judgment : 03.01.07

HON'BLE MR. PRAKASH TATIA, J.

Mr. Rajesh Joshi for the appellant.

The appellant is aggrieved gainst the judgment and decrees passed by the trial court dated 26.2.1981 and dismissal of the appeal by the First Appellate Court by judgment and decree dated 12.8.1983. While admitting the appeal following substantial question of law was framed on dated 19.10.1983:

> "Whether a sum named as security deposit by the tenant with the land lord is adjustable against the rent due before termination of the tenancy".

According to the learned counsel for the appellant landlord, the suit for eviction was filed by the paintiff which was dismissed by the trial court but while dismissing the suit of the plaintiff, the trial court held that the defendant is entitled to get the adjustment of Rs. 400/- paid by the defendant to the appellant landlord against future rent. The grievance of the appellant against the trial court's and Appellate Court's above view is that the defendant cannot ask for adjustment of

Rs. 400/- against rent during currency of tenancy. It is submitted that the land lord is entitled to keep Rs. 400/- as security money and is also entitled to keep the money till tenant vacates the suit premises.

I have considered the submissions of the leanred counsel for the appellant and perused the record as well as the reasons given by two courts below. The two courts below concurrently held that the appellant faild to prove that the said amount was paid by the tenant to the landlord as security money with condition that the amount will be adjusted at the time the tenant vacates the suit premises. Admittedly, there is no documentary evidence for this condition nor condition has been mentioned in the rent receipt. In view of the above, the basic fact that the amount of Rs. 400/- was deposited as security by the tenant with condition that it shall be adjusted against rent at the time of vacating the suit premises or will be refunded to the tenant when the tenancy will come to an end, therefore, the substantial question as framed on 19.10.1983 mentioned above does not arise in the facts of the case for want of proof of foundational fact.

The appeal of the appellant is dismissed.

(PRAKASH TATIA), J.

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